

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

DALE A. KORNBAU, EDWARD CARKIDO,
MIKE LAPCEVICH, ALBERT ABRAMS,
ROBERT DANNESSA, JOHN SIMON,
MICHAEL SANKO, JASON OSTROWSKI,
CHIP CHASSER, THOMAS SZMARA, TODD
TITUS, DOUGLAS VAN KIRK, JIMMY
SWISKOSKI, WILLIAM MILLER, RANDALL
DYE, ANTHONY RUOZZO, JOHN
LAMMERDING, MICHAEL SMITH, VIC
BERLON, KENNETH B. JUMPER JR.,
GREGORY DELEO, SAM HERRIOTT, ANTHONY
PANGELLO, ERIC JANKOWSKI, MARK J.
JANKOWSKI, RALPH GOIST, JACQUELINE M.
TERMINE, KEVIN WALGENBACH, RON HAUN,
LARRY SMOOT, JAMES V. MCCARTIN, THOMAS
D. ANKROM, CRAIG E. LEE, RICK CAPPELLINO,
JAMES HANRAHAN, ROBERT CORYEA,
WILLIAM PREZGAY,

Individually and on behalf of all others
Similarly situated and identified below,

Plaintiffs

v.

FRITO LAY NORTH AMERICA, INC.,

Defendant

Type of Pleading:

CLASS ACTION COMPLAINT

Filed on behalf of Plaintiffs,

Counsel of Record for these Parties:

John R. Linkosky, Esquire
PA I.D. No. 66011
LINKOSKY & ASSOC.
715 Washington Avenue
Carnegie, PA 15106
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Defendant

CLASS ACTION COMPLAINT

AND NOW come the Plaintiffs by and through their counsel John R. Linkosky, Esquire, and file this Class Action Complaint and aver as follows:

NATURE OF THE ACTION, JURISDICTION AND VENUE

1. This is a Class Action pursuant to the Fair Labor Standards Act of 1938 as Amended (FLSA) (29 U.S.C. Section 201 et seq.) to recover damages for the non-payment of overtime wages.

2. Jurisdiction of this Court is involved pursuant to 28 U.S.C. Section 1331. This action is authorized pursuant to the FLSA (29 U.S.C. Section 216(b)).

3. The actions and policies alleged to be unlawful were committed in and around Youngstown, Ohio and throughout the United States. Defendant has operating facilities in Hubbard, Ohio and nationwide locations.

PARTIES

4. Plaintiff Dale Kornbau is an individual residing at 7037 Brockway Avenue, Brookfield, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania, and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

5. Plaintiff Edward Carkido is an individual residing at 4540 Rita Avenue, Austintown, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania, and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

6. Plaintiff Mike Lapceovich is an individual residing at 2395 Maria Lane, Hermitage, Mercer County, Pennsylvania. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania, and drove a motor vehicle with GVW less than 10,001 pounds in the performance of his duties.

7. Plaintiff Albert Abrams is an individual residing at 2265 Volney Road, Youngstown, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania, and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

8. Plaintiff Robert Dannessa is an individual residing at 1669 Medford, Youngstown, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

9. Plaintiff John Simon is an individual residing at 1317 Keefer Road, Girard, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

10. Plaintiff Michael Sanko is an individual residing at 5676 Arrel Smith Road, Lowellville, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at

various times throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

11. Plaintiff Jason Ostrowski is an individual residing at 398 Robinson Road, Campbell, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

12. Plaintiff Chip Chasseris is an individual residing at PO Box 336, Leavittsburg, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

13. Plaintiff Thomas Szara is an individual residing at 39 Rockdale Avenue, Boardman, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

14. Plaintiff Todd Titus is an individual residing at 1060 Buckeye Drive, Sharpsville, Mercer County, Pennsylvania. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and

Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

15. Plaintiff Douglas Van Kirk is an individual residing at 3781 Cumberland Circle, Austintown, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

16. Plaintiff Jimmy Swiskoski is an individual residing at 3251 Susan Circle, Youngstown, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

17. Plaintiff William Miller is an individual residing at 1945 Cloverbrook, Mineral Ridge, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

18. Plaintiff Randall Dye is an individual residing at 1727 Stillwagon Road SE, Apt. 1, Warren, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

19. Plaintiff Anthony Ruozzo is an individual residing at 518 Poland Avenue, Struthers, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

20. Plaintiff John Lammerding is an individual residing at 376 Beverly Hills Drive, Youngstown, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

21. Plaintiff Michael Smith is an individual residing at 67 Clingan Street, Hubbard, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

22. Plaintiff Vic Berlon is an individual residing at 1807 Halbert Drive, Poland, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

23. Plaintiff Kenneth B. Jumper, Jr. is an individual residing at 907 Doris Drive, Hubbard, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at

various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

24. Plaintiff Gregory Deleo is an individual residing at 7656 Anderson Avenue, Warren, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

25. Plaintiff Sam Harriott is an individual residing at 1032 Buckeye Drive, Sharpsville, Mercer County, Pennsylvania. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

26. Plaintiff Anthony Pangelo is an individual residing at 1792 Leland Avenue, Poland, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

27. Plaintiff Eric Jankowski is an individual residing at 4583 Rhode Island Drive, Austintown, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and

Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

28. Plaintiff Mark J. Jankowski is an individual residing at 1036 Patricia Drive, Apt 2, Girard, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

29. Plaintiff Ralph Goist is an individual residing at 47722 Metz Road, New Waterford, Columbiana County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

30. Plaintiff Jacqueline M. Termine is an individual residing at 1958 Lexington Drive Avenue NW, Warren, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

31. Plaintiff Kevin Walgenbach is an individual residing at 193 North Oakland Avenue, Sharon, Mercer County, Pennsylvania. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

32. Plaintiff Ron Haun is an individual residing at 1020 Sharon Hogue Road, Masury, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

33. Plaintiff Larry Smoot is an individual residing at 8146 Lorain Street SE, Masury, Trumbull County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

34. Plaintiff James V. McCartin is an individual residing at 3405 Maple Spring, Canfield, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

35. Plaintiff Thomas D. Ankrom is an individual residing at 120 Sandstone Road, Canfield, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

36. Plaintiff Craig E. Lee is an individual residing at 5972 Badal Drive, Lowellville, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times

throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

37. Plaintiff Rick Cappellino is an individual residing at 305 Paris Drive, Austintown, Mahoning County, Ohio. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the state of Ohio and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

38. Plaintiff James Hanaran is an individual residing at RD#1, West Middlesex, Mercer County, Pennsylvania. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

39. Plaintiff Robert Coryea is an individual residing at 620 E. Main Street, Grove City, Mercer County, Pennsylvania. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

40. Plaintiff William Prezgay is an individual residing at 1405 Buhl Terrace, Farrell, Mercer County, Pennsylvania. Plaintiff has been employed by Defendant as an RSR at various times throughout the past three years delivering snack foods in the states of Ohio and

Pennsylvania and drove a motor vehicle with a Gross Vehicle Weight (GVW) of less than 10,001 pounds in the performance of his duties.

41. Plaintiffs are and have been employees of Defendant engaged in driving motor vehicles of less than ten thousand and one pounds (10,001 lbs) Gross Vehicle Weight (GVW) of delivering Defendant's snack products to retail stores in Pennsylvania, Ohio and throughout the United States.

42. Defendant, Frito Lay North America, Inc. is a wholly owned subsidiary of PepsiCo, Inc. Defendant maintains places of business in Hubbard, Ohio and throughout the United States.

43. Defendant has employees engaged in interstate commerce, the production of goods for interstate commerce, and who handle goods that have moved in or have been produced for interstate commerce, with an annual gross dollar volume of sales made or business done in excess of \$500,000.00.

44. Defendant is an enterprise pursuant to the FLSA (29 U.S.C. Section 203(s)(1)), and Plaintiffs are entitled to the protection of the FLSA during all times relevant to this lawsuit.

45. Defendant is an employer of Plaintiffs within the meaning of the FLSA (29 U.S.C. Section 203(d)).

BACKGROUND AND STATEMENT OF CLAIMS

46. Plaintiffs work for Defendant as Route Sales Representatives (RSRs) delivering Defendant's snack food products to Defendant's retail store customers.

47. Plaintiffs drive motor vehicles in the course of their duties which are less than ten thousand and one pounds (10,001 lbs) a Gross Vehicle Weight (GVW).

48. Plaintiffs are not exempt employees pursuant to any provision of the FLSA.

49. Beginning in or about 2004, Plaintiffs were paid salaries, earned commissions on their deliveries, and were paid overtime compensation pursuant to a system of payment entitled by Defendant as Variable Rate Overtime (VROT).

50. The VROT system of overtime payment is designed pursuant to the provisions of 29 C.F.R. Section 778.114 and is known as the “fluctuating workweek” method of overtime payment.

51. Plaintiffs regularly worked in excess of forty (40) hours in many workweeks and were paid overtime compensation pursuant to the VROT system of payment.

52. The VROT system of overtime payment is not permitted pursuant to the FLSA when employees are paid non-discretionary bonuses or commissions in addition their salary.

53. Plaintiffs were not paid overtime compensation at one and one half (1 1/2) their regular rate of pay as required by the FLSA (29 U.S.C. Section 207(a)).

CLASS ACTION ALLEGATIONS

54. Plaintiffs are part of a class of non-exempt employees of Defendant who are similarly situated to Plaintiffs, who have worked as RSR’s in Western Ohio and throughout the United States, who drove motor vehicles of less than ten thousand and one pounds (10,001 lbs) gross vehicle weight (GVW) in the performance of their duties for Defendant.

55. Plaintiffs and the similarly situated RSR’s were subject to the same policy and practice of Defendant to pay overtime compensation pursuant to Defendant’s VROT system of overtime payment which denied them proper overtime compensation pursuant to the FLSA (29 U.S.C. Section 207(a)).

56. Defendant's failure to pay Plaintiffs and similarly situated employees proper overtime compensation was knowing and willful.

57. Prosecuting this as a class action for Plaintiffs and the similarly situated employees of Defendant who have been unlawfully denied overtime compensation will promote judicial efficiency and will best protect the interests of the class members.

58. There are no conflicts of interest among the class members.

59. Counsel for the Representatives Plaintiffs John R. Linkosky is experienced in the field of wage and hour laws, and class actions and will fairly and competently represent the interests of class members.

FAIR LABOR STANDARDS ACT CLAIMS FOR VIOLATION OF 29 U.S.C. Section

207(a)

60. Plaintiffs hereby incorporate paragraphs 1 through 22 of this Complaint as though the same were more fully set forth at length herein.

61. Plaintiffs and all other similarly situated are employees of Defendant within the meaning of the FLSA (29 U.S.C. Section 203(e)).

62. Defendant is an employer pursuant to the FLSA (29 U.S.C. Section 203(d)).

63. Plaintiffs, and all others similarly situated are not exempt under any applicable provisions of the FLSA.

64. Plaintiffs and all others similarly situated, are entitled to overtime compensation at a rate of time one and one-half (1 1/2) their regular rates of pay for all hours worked in excess of forty (40) in a workweek.

65. Plaintiffs, and all others similarly situated, worked in excess of forty (40) hours in many workweeks during their employment by Defendant.

66. Defendant failed to pay proper overtime compensation to Plaintiffs, and all others similarly situated, at time and one and one-half (1 ½) their regular rates of pay for hours worked over forth (40) hours in a workweek.

67. Defendant's failure to pay proper overtime compensation is knowing and willful.

68. Defendant's failure to pay proper overtime compensation is a violation of the FLSA (29 U.S.C. Section 207(a)).

PRAYER FOR RELIEF

69. WHEREFORE, Plaintiffs and all others similarly situated, respectfully request that this Honorable Court:

A. Order Defendant to make Plaintiffs, and all others similarly situated, whole by paying overtime wages due at time and one and one-half (1 ½) their regular rates of pay for all hours worked over forty (40) in a workweek.

B. Order Defendant to pay liquidated damages on the wages owed.

C. Order Defendant to pay the costs and reasonable attorney's fees incurred by Plaintiffs, and;

D. Grant such further relief as this Honorable Court deems necessary.

Respectfully submitted,

/s/ **John R. Linkosky**
John R. Linkosky, Esquire
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